

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

CHARLES BARKLEY, on behalf of himself)	CASE NO. 5:18-CV-2377-SL
and all others similarly situated,)	
)	JUDGE SARA ELIZABETH LIOI
Plaintiff,)	
)	<u>MOTION TO DISMISS WITHOUT</u>
v.)	<u>PREJUDICE FOR FAILURE TO</u>
)	<u>COOPERATE WITH SETTLEMENT</u>
NATIONAL POLISHING SYSTEMS, INC.,)	
)	
Defendant.)	
)	

NOW COMES Defendant National Polishing Systems, Inc., by and through its counsel, and hereby moves to dismiss Barkley's case *without prejudice* because Barkley has failed to cooperate and execute the settlement agreement reached by the parties. In support of its *Motion*, Defendant states:

- On December 13, 2018, the parties agreed on a settlement of this case. *Notice of Settlement, Docket #9.*
- On December 27, 2018, Defendant's counsel forwarded the settlement papers (including a motion for court approval) to Barkley's counsel for review and approval.
- To date, there has been no objection to the settlement papers.
- Upon information and belief, Barkley's counsel attempted to reach Barkley numerous times since December 27, 2018 – without success or any return communication from Barkley.
- On January 14, 2018, the parties filed a *Joint Motion for 2 Week Extension* to seek approval of the parties' settlement agreement (*Joint Motion for 2 Week Extension, Docket #11*) to allow more time for Barkley to cooperate and respond.
- Upon information and belief, Barkley's counsel made further attempts to reach Barkley between January 14th – January 28th, 2019 – again without success or any return communication from Barkley.
- Upon information and belief, Barkley is not cooperating with his own counsel and has not executed the proposed settlement agreement. Nor has he objected to the agreement.

- Upon information and belief, Barkley's counsel intends to file a motion to withdraw as counsel.

Because Barkley has failed to cooperate and execute the settlement agreement, has failed to communicate with his own counsel and – by doing so – has wasted the Court's and counsel's time and resources, Defendant asks the Court to dismiss Barkley's case *without prejudice*.

Respectfully submitted,

/s/ Barry Y. Freeman

Barry Y. Freeman (#0062040)
BUCKINGHAM DOOLITTLE & BURROUGHS LLC
1375 E. 9th Street, Suite 1700
Cleveland, Ohio 44114
Telephone: (216) 736.4223
Facsimile: (216) 615.3023
bfreeman@bdblawn.com

Attorney for Defendant

CERTIFICATE OF SERVICE

A copy of the foregoing was served on all parties, via the Court's electronic filing system, this 28th day of January, 2019.

/s/ Barry Y. Freeman